

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**GPS PROPERTIES LLC
dba Randhawas Travel Center
NPDES Permit #7900706**

**ADMINISTRATIVE ORDER
NO. 2008-WW- 31**

**TO: Gurcharan S. Randhawa
GPS Properties LLC
1301 Summit St.
Marshalltown, IA 50158**

I. SUMMARY

This administrative order (Order) is issued to GPS Properties LLC by the Iowa Department of Natural Resources (Department) for the purpose of achieving and maintaining compliance with applicable effluent and water quality standards for the operation of a wastewater disposal system.

Pursuant to this Order, GPS Properties LLC shall:

- Cease all discharges from the one-cell controlled-discharge lagoon which is operated pursuant to NPDES Permit # 7900706;
- Maintain a certified operator for the wastewater treatment facility at Randhawas Travel Center; and
- Pay a penalty in the amount of \$10,000.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Kate Bason
IDNR Field Office #5
401 S.W. 7th Street
Suite 1
Des Moines, IA 50309
Ph: 515-725-0333

Relating to this Order:

Jon C. Tack
Legal Services Bureau
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph. 515-281-8889

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. GPS Properties LLC (referred to herein as Randhawas Travel Center) operates a truck stop/restaurant under the name Randhawas Travel Center (the site is referred to herein as the travel center). The travel center is located in or near Brooklyn, Iowa at Exit 197 of Interstate 80. Wastewater from the travel center is treated by a water treatment facility consisting of a septic tank and a one-cell controlled-discharge lagoon which is operated pursuant to NPDES Permit # 7900706. Randhawas Travel Center purchased the Brooklyn I80 Truck Stop in July of 2004 and constructed a new truck stop/restaurant facility in 2005.

2. On August 11, 2004, the former wastewater operator at the facility wrote a letter to the Department as notification that he would no longer be conducting the wastewater testing and monthly operation reports for the travel center.

3. On November 30, 2004, a Notice of Violation was issued for failure to submit wastewater monitoring reports for the period of August through October 2004. The Notice was sent to Brooklyn 80 Impl. as the last known address of the travel center. On December 1, 2004, the former owner, Ken Brannian, of the travel center called the Department and indicated that he no longer owned the travel center, but would forward information in regard to the new owners. On December 10, 2004, Mr. Brannian provided contact information for Randhawas Travel Center. A Notice of Violation was sent to "Sunny Randhawa, Randhawas Travel Center" on December 14, 2004.

4. Discussions were held by telephone between the Department and Gurcharan Randhawa, Sunny Randhawa, Pargot Randhawa, and engineer Gary Sindelar on December 22, 2004, January 7, 2005, January 12, 2005, January 13, 2005, and January 19, 2005. As a result of these discussions, the following facts were disclosed:

- a. The travel center was discharging wastewater without any effluent testing.
- b. The travel center began discharging wastewater on January 1st 2005.
- c. No monthly operating reports had been submitted for the period of August 2004 to December 2004.

During the conversations, Gurcharan Randhawa reported that lagoon sampling had been done by the former owner prior to purchase, but the results could not be located. The discharge from the travel center was ceased on January 19, 2005.

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5. On January 13, 2005, the Department conducted a technical assistance visit at the travel center and also spoke with Mr. Brannian. Mr. Brannian indicated that he had unplugged the discharge pipe in November of 2004 and the pipe had not been subsequently closed. A pre-drawdown sample had been collected and the results indicated the sample was in compliance, however, no discharge sample had been collected.

6. On January 20, 2005, a Notice of Violation was issued to Randhawas Travel Center. The NOV cited a prohibited discharge of effluent and the failure to conduct required monitoring.

7. On February 20, 2005, Paul Jones sent a letter to the Department indicating that he would be acting as the certified operator for the travel center.

8. On May 12, 2005, the Department sent Randhawas Travel Center a NPDES permit application with an explanatory cover letter.

9. From September 23, 2005 through November 1, 2005, email and telephone discussions occurred between the operator and the Department in regard to the need for a construction permit for the construction of new wastewater facilities.

10. On January 11, 2006, the Department sent a letter to Randhawas Travel Center in regard to the requirements for obtaining a construction permit for the construction of new wastewater facilities.

11. On February 28, 2006, the Department sent a Final Notice to Randhawas Travel Center in regard to the failure to apply for NPDES permit renewal. The travel center's NPDES permit had expired on February 11, 2006 and Randhawas Travel Center was notified that it was no longer authorized to discharge from its wastewater lagoon.

12. On March 24, 2006, a Notice of Violation was issued to Randhawas Travel Center. The Notice required Randhawas Travel Center to obtain a construction permit and to obtain an NPDES permit. The Notice cited Randhawas Travel Center for illegal solid waste disposal and the failure to properly close a private well on the property.

13. An NPDES permit was issued to Randhawas Travel Center on May 26, 2006.

14. On June 3, 2006, Paul Jones notified the Department that he would no longer be acting as certified operator for Randhawas Travel Center.

15. On June 23, 2006, the Department issued a Notice of Violation to Randhawas Travel Center due to the failure to properly close a private well on the property. The

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Notice also requested information in regard to the certified operator for the wastewater facility and in regard to the plans for construction at the travel center.

16. On July 11, 2006, Randhawas Travel Center informed the Department that the well had been closed and that a certified operator had been retained. Randhawas Travel Center further promised to submit a schedule for repair or replacement of the wastewater facilities. The named certified operator was contacted and denied being retained.

17. On September 28, 2006, the Jasper County Sanitarian was contacted by the Department. The sanitarian indicated that he had no knowledge of any well plugging activity having occurred at the travel center.

18. On October 2, 2006, the Department contacted the owner to inquire about the overdue response in regard to well plugging and wastewater improvements. The Department was subsequently contacted by the engineer for Randhawas Travel Center. The engineer reported that the new restaurant had opened at the travel center and a certified operator had been designated.

19. On October 3, 2006, Geosource contacted the Department and indicated that it had performed the well plugging at the site but that the well plugging records were being withheld due to nonpayment of fees.

20. On October 3, 2006, the Department issued a Notice of Violation to Randhawas Travel Center for failure to provide well plugging records and failure to submit monthly operating reports (MORs) for July and August. The Notice required Randhawas Travel Center to submit MORs, provide a written schedule for the repair or replacement of wastewater facilities, retain a certified operator, obtain a construction permit for the repair or replacement of wastewater facilities, and submit a copy of the well plugging records.

21. On October 11, 2006, the Department received a letter from Ryken Engineering on behalf of Randhawas Travel Center. The letter provided the Department with notification of the designated certified operator for the travel center. The letter further proposed a schedule for one year of monitoring and evaluating the current facilities prior to initiating upgrades or repairs to the onsite wastewater systems.

22. On October 15, 2006, the Department conducted an inspection of the Randhawas Travel Center.

23. On October 17, 2006, the Department sent a letter to Randhawas Travel Center notifying Randhawas Travel Center of overdue NPDES permit fees.

24. On November 30, 2006, Randhawas Travel Center submitted the well plugging record to the Department. Pursuant to the IAC, the record was due within 30 days of the plugging of the well.

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25. On December 12, 2006, the Department issued a Notice of Violation to Randhawas Travel Center. The Notice required Randhawas Travel Center to provide a preliminary engineering evaluation, submit MORs, provide an explanation for the flow discrepancies between the rural water use and the water use amounts reported in the MORs, provide a completed Wastewater Operator Affidavit Form for the certified operator, have all MORs signed by the certified operator, repair and maintain the existing lagoon, and repair or replace the defective effluent valves on the existing lagoon.

26. On December 19, 2006, the Department sent a letter informing Randhawas Travel Center that it was in compliance with the requirement for a certified operator.

27. On January 4, 2007, the Department received a letter from Ryken Engineering on behalf of Randhawas Travel Center. The letter responded to the December 12, 2006 Notice of Violation.

28. On January 10, 2007, the Department received a letter from Ryken Engineering on behalf of Randhawas Travel Center. The letter responded to the December 12, 2006 Notice of Violation and includes estimated water use projections well over 1500 GPD at the facility.

29. On June 28, 2007, the Department received a letter from Ryken Engineering on behalf of Randhawas Travel Center. The letter proposed a schedule for connecting the Randhawas Travel Center with the City of Brooklyn wastewater treatment facility.

30. On July 27, 2007, the Department sent an offer for consent Order to Ryken Engineering.

31. On April 15, 2008, the Department sent Ryken Engineering confirmation of a telephone discussion, in which Ryken Engineering was to submit a proposal outlining the preferred options for wastewater improvements to the Department by June 1, 2008.

32. On May 1, 2008, a memo documented a field office visit to the wastewater lagoon and confirmed that the drawdown valve was inoperable (as it has been for several years).

33. On May 7, 2008, the certified operator, a Ryken employee, notified the Department they were resigning, effective June 30, 2008. No wastewater monitoring reports have been received by the Department since June 2008.

34. From July of 2007 to June of 2008, Ryken Engineering provided a certified operator for Randhawas Travel Center. Ryken Engineering also completed a review of the facility and attempted to negotiate an arrangement to connect Randhawas Travel Center to the City of Brooklyn wastewater treatment system.

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35. On June 13, 2008, Ryken Engineering notified Randhawas Travel Center and the Department that Ryken Engineering would no longer provide a certified operator or otherwise operate the Randhawas Travel Center wastewater system as of June 30, 2008. Ryken Engineering further indicated that the existing system can not be operated in compliance with current or future effluent limitations and recommended options for alternative systems. Ryken Engineering also notified the Department that a full engineering evaluation had been completed and would be submitted on behalf of Randhawas Travel Center.

36. As of December 30, 2008, Randhawas Travel Center has failed to obtain a new certified operator, failed to submit monthly monitoring reports since July 1, 2008, and failed to submit the engineering evaluation previously promised.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Randhawas Travel Center has violated this provision.
2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules.
3. NPDES Permit #7900706 requires the wastewater treatment facility to be adequately operated and maintained. Standard Condition #8 of the permit requires that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit." Randhawas Travel Center has violated both 567 IAC 64.7(5)"f" and the terms of its NPDES permit.
4. 567 IAC 63.7 requires the submission of records of operation within 15 days of the close of the reporting period. 567 IAC 63.8 requires the submission of records of operation on a monthly basis unless otherwise specified by the Department. Randhawas Travel Center has violated these provisions.

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5. 567 IAC 63.11 requires that all records of operation be signed by the certified operator as a duly authorized representative of the corporation. Randhawas Travel Center has violated this provision.

6. 567 IAC 39.6(2) requires that the owner certify on Department Form 542-1226 that an abandoned well has been plugged in accordance with the requirements and time schedule contained in 567 IAC chapter 39. Form 542-1226 must be submitted within 30 calendar days of the date the plugging was completed. Randhawas Travel Center violated this provision.

V. ORDER

The Department hereby orders Randhawas Travel Center to:

1. Cease all discharges from the one-cell controlled-discharge lagoon which is operated pursuant to NPDES Permit # 7900706. All effluent or other water in the lagoon shall be pumped to trucks and hauled to a permitted wastewater facility until such time as construction of necessary wastewater treatment facility improvements have been completed.

2. Maintain a certified operator for the wastewater facilities at all times until and unless the travel center is connected to another wastewater system and the onsite system is closed. Randhawas Travel Center shall ensure that the certified operator visits the travel center at least monthly while the facility is prohibited from discharging pursuant to this Order. Once necessary improvements have been completed and discharging is authorized, Randhawas Travel Center shall ensure that the certified operator visits the travel center daily during discharging until December 31, 2017 or until the onsite system is closed.

3. Pay a penalty in the amount of \$10,000 within 60 days of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to

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this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with penalties.

a. Economic Benefit. Randhawas Travel Center has achieved significant cost savings by failing to maintain or upgrade its wastewater treatment system, failing to maintain a certified operator for the travel center, and failing to submit timely MORs. The appropriate certified operator fee has been estimated by Ryken Engineering to be at least \$300 per month for this facility. Randhawas Travel Center has specifically rejected the option of connecting its system to the City of Brooklyn based upon cost considerations. The capital costs plus monthly costs avoided thus far are in the tens of thousands of dollars. Due to the desire to issue this Order administratively, the economic benefit portion of the penalty shall be \$5,000. In the event that it should be determined that a penalty of less than \$5,000 is warranted for the gravity and culpability portions of this penalty assessment, the Department asserts that the full \$10,000 penalty may be justified based upon economic benefit.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. In this case, there have been ongoing violations related to a failure to upgrade or repair existing facilities and a failure to monitor and report. Recently, there has been a failure of oversight and monitoring which increases the risk of the release of pollutants. The length of time that these violations have continued greatly increases the potential penalty. In order to resolve this matter administratively, a penalty of only \$2,500 being assessed for this factor. In the event that it should be determined that a penalty of less than \$7,500 is warranted for the economic benefit and culpability portions of this penalty assessment, the Department asserts that the full \$10,000 penalty may be justified based upon the gravity assessment due to the multiple days of violation.

c. Culpability. Randhawas Travel Center has been repeatedly provided technical assistance by the Department. Despite this assistance, there have been prohibited discharges and continuing noncompliance. Randhawas Travel Center has repeatedly promised to return to compliance and has not fulfilled those promises. Randhawas Travel Center proceeded with construction and expansion of the truck stop business despite the known wastewater facility deficiencies. The Department has provided multiple opportunities to achieve compliance and has attempted to work with Randhawas Travel Center for years. Despite these efforts, Randhawas Travel Center appears to be no closer to initiating construct or achieving compliance. A penalty of \$2,500 is assessed for this factor. In the event that it should be determined that a penalty of less than \$7,500 is warranted for the economic benefit and culpability portions of this penalty assessment,

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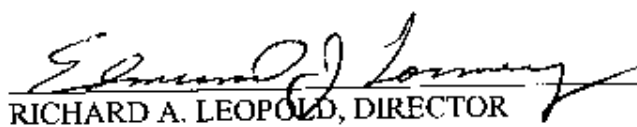
the Department asserts that the full \$10,000 penalty may be justified based upon the gravity assessment due to the multiple days of violation. In order to resolve this matter administratively, a penalty of only \$2,500 being assessed for this factor. In the event that it should be determined that a penalty of less than \$7,500 is warranted for the economic benefit and gravity portions of this penalty assessment, the Department asserts that the full \$10,000 penalty may be justified based upon the culpability assessment due to the multiple days of violation.

VII. APPEAL

Pursuant to Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Commission may be filed within 30 days of issuance of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.191. Compliance with section "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

for 

RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31st day of
December, 2008